

(9) The STT shall read the result displayed on the device two minutes after inserting the swab into the device. The STT shall show the device and its reading to the employee and enter the result on the form.

(10) Devices, swabs, gloves and other materials used in saliva testing shall not be reused, and shall be disposed of in a sanitary manner following their use, consistent with applicable requirements.

(e) In the case of any screening test performed under this section, the STT, after determining the alcohol concentration result, shall follow the applicable provisions of §40.63 (e)(1)–(2), (f), (g), and (h). The STT shall also enter, in the “Remarks” section of the form, a notation that the screening test was performed using a non-evidential breath testing device or a saliva device, as applicable. Following completion of the screening test, the STT shall date the form and sign the certification in Step 3 of the form.

#### **§ 40.103 Refusals to test and uncompleted tests.**

(a) Refusal by an employee to complete and sign the alcohol testing form required by § 40.99 (Step 2), to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise to cooperate in a way that prevents the completion of the testing process, shall be noted by the STT in the remarks section of the form. This constitutes a refusal to test. The testing process shall be terminated and the STT shall immediately notify the employer.

(b) If the screening test cannot be completed, for reasons other than a refusal by the employee, or if an event occurs that would invalidate the test, the STT shall, if practicable, immediately begin a new screening test, using a new testing form and, in the case of a test using a saliva screening device, a new device.

#### **§ 40.105 Inability to provide an adequate amount of breath or saliva.**

(a) If an employee is unable to provide sufficient breath to complete a

test on a non-evidential breath testing device, the procedures of § 40.69 apply.

(b) If an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device), the STT, as provided in § 40.101 of this part, shall conduct a new test using a new device. If the employee refuses to complete the new test, the STT shall terminate testing and immediately inform the employer. This constitutes a refusal to test.

(c) If the new test is completed, but there is an insufficient amount of saliva to activate the device, STT shall immediately inform the employer, which shall immediately cause an alcohol test to be administered to the employee using an EBT.

#### **§ 40.107 Invalid tests.**

An alcohol test using a non-evidential screening device shall be invalid under the following circumstances:

(a) With respect to a test conducted on a saliva device—

(1) The result is read before two minutes or after 15 minutes from the time the swab is inserted into the device;

(2) The device does not activate;

(3) The device is used for a test after the expiration date printed on its package; or

(4) The STT fails to note in the remarks section of the form that the screening test was conducted using a saliva device;

(b) With respect to a test conducted on any non-evidential alcohol testing device, the STT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording on the form of the test result.

#### **§ 40.109 Availability and disclosure of alcohol testing information about individual employees.**

The provisions of § 40.81 apply to records of non-evidential alcohol screening tests.